

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUTINTA MICHELO, KATHERINE
SEAMAN, MARY RE SEAMAN, and
SANDRA TABAR, individually and on
behalf of all others similarly situated,

Plaintiffs,

- against -

NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2007-2, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2007-3, TRANSWORLD SYSTEMS, INC.,
in its own right and as successor to NCO
FINANCIAL SYSTEMS, INC.; EGS
FINANCIAL CARE INC., formerly known as
NCO FINANCIAL SYSTEMS, INC.; and
FORSTER & GARBUS LLP,

Defendants.

CHRISTINA BIFULCO, FRANCIS BUTRY,
and CORI FRAUENHOFER, individually
and on behalf of all others similarly situated,

Plaintiffs,

-against-

NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2004-2, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2006-4, TRANSWORLD SYSTEMS, INC.,
in its own right and as successor to NCO
FINANCIAL SYSTEMS, INC.; EGS
FINANCIAL CARE INC., formerly known as
NCO FINANCIAL SYSTEMS, INC.; and
FORSTER & GARBUS LLP,

Defendants.

ORDER

18 Civ. 1781 (PGG)

18 Civ. 7692 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

In these putative class actions, Plaintiffs Mutinta Michelo, Katherine Seaman, Mary Re Seaman, and Sandra Tabar (the “Michelo Plaintiffs”) and Plaintiffs Christina Bifulco, Francis Butry, and Cori Frauenhofer (the “Bifulco Plaintiffs”) allege that Defendants have orchestrated a scheme to “fraudulently obtain default judgments . . . for unprovable debts” against them in state court. They allege that Defendants have carried out this scheme by, inter alia, filing documents containing false or deceptive information in those state proceedings. The Michelo Plaintiffs and Bifulco Plaintiffs assert claims for violations of the Fair Debt Collection Practices Act (“FDCPA”); New York General Business Law (“GBL”) Section 349; and New York Judiciary Law Section 487. (Michelo Am. Cmplt. (Dkt. No. 60) ¶¶ 1, 12, 170-189; Bifulco Cmplt. (Dkt. No. 1) ¶¶ 1, 11, 167-192) Defendants in each case have moved to dismiss the respective actions in their entirety. (See Michelo Mot. (Dkt. No. 80); Bifulco Mot. (Dkt. No. 37))

For reasons that will be explained in a forthcoming opinion, the motions each are granted in part and denied in part, as follows:

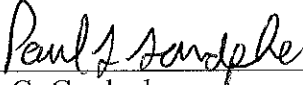
- (1) Plaintiff Michelo’s FDCPA claim is dismissed as time-barred;
 - (2) The Seaman Plaintiffs’ FDCPA claims – to the extent they rely on the misrepresentation that Defendant National Collegiate Loan Trust 2007-3 is the “original creditor” of the Seamans’ loan – are dismissed as time-barred;
 - (3) Plaintiff Katherine Seaman’s GBL Section 349 claim is dismissed for failure to plead an actual injury;
 - (4) Plaintiff Butry’s GBL Section 349 claim is dismissed for failure to plead an actual injury;
- and

(5) Plaintiff Michelo's New York Judiciary Law Section 487 claim is dismissed for failure to plead damages.

The motions are otherwise denied. The Clerk of Court is directed to terminate the motions. (No. 18 Civ. 1781 (Dkt. No. 80); No. 18 Civ. 7692 (Dkt. No. 37))

Dated: New York, New York
September 30, 2019

SO ORDERED.



Paul G. Gardephe
United States District Judge